

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

C.R. No.1348 of 2005

Date of decision: December 13,2006

Swadesh Kumar Kohli V. Gurprit Singh Hundal

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Arun Jain, ,Advocate, with Mr. Rakesh Garg,Advocate,for the tenant-petitioner.
Shri V,K,Jain,Senior Advocate with Ms. Divya Sharma,Advocate for the landlord-respondent.

Viney Mittal,J.(Oral)

Petitioner before this Court is a tenant who has been ordered to be ejected from a residential premises under section 13-A of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the “Act”) on a petition filed by a specified landlord. The order of ejectment has been challenged by the tenant-petitioner through the present petition.

Gurprit Singh Hundal, landlord, filed a petition under section 13-A of the Act with the averments that he is the owner of House No.2047, Sector 21-C, Chandigarh. The said house was purchased by him from its previous owner vide a registered sale deed dated November 17,2000. After the purchase of the said house, the landlord had served a notice dated December 30,2000 upon the tenant informing that the tenant was in arrears of rent with effect from February 1,1998 and further informing that he (landlord) was going to retire from service on March 20,2002 and,therefore, the house in question was required by him for his personal use and occupation. No response of the said notice was received by the

landlord. The landlord pleaded that he took his retirement from defence services on January 31,2001 as a Colonel. After that a notice was served on April 3,2001 upon the tenant informing his retirement from service on the aforesaid date. It has further been pleaded by the landlord that he having retired from Government service had become a specified landlord entitling him to evict the tenant under section 13-A of the Act. It was averred in the ejectment petition that the family of the landlord consisted of his wife, two sons and a daughter. One of his sons was running a restaurant at Dharampur (H.P.) and another one was preparing for defence services. It was claimed that the landlord does not own and possess any other house within the urban area of Chandigarh and as such required the demise premises for his personal use and occupation.

Leave to defend was granted to the tenant, Swadesh Kumar Kohli. In the written statement filed by him, he challenged the status of the landlord as a specified landlord. It was claimed by the tenant that purchase of the house in question by the landlord was in fact a sham transaction, inasmuch as, the said property had been purchased by some property dealers in the name of landlord with a view to take advantage of the provisions of section 13-A of the Act. The tenant also pleaded that the landlord, Gurprit Singh Hundal, had actually retired in the month of March,1998 from Indian Army and the house in question had been shown to be purchased by him on November 17,2000 i.e. after the date of his retirement and as such the landlord could not be treated to be a specified landlord. It was also alleged by the tenant that after his retirement in the year 1998, the landlord was serving on contractual basis and even from the aforesaid re-employed service, had been released with effect from

January 31,2001. It was maintained that the aforesaid contractual employment of the landlord could not be treated to be a service under the Union of India and as such the landlord could not be treated to be entitled to the ground of ejectment under section 13-A of the Act.

The learned Rent Controller on the basis of the evidence led by the parties and after taking into consideration the facts and circumstances of the case held that the landlord was proved to be a specified landlord on the date of purchase of the property in question i.e. November 17,2000. It was also held that the property in question was duly purchased by the landlord. The re-employment of the landlord after his retirement in the year 1998 was taken to be an employment which entitled the landlord to be treated as a specified landlord. Consequently, vide an ejectment order dated December 22,2004, the tenant was ordered to be ejected from the premises in question. It is in these circumstances that the tenant has approached this court through the present petition.

I have heard Shri Arun Jain,learned counsel appearing for the tenant-petitioner and Shri V.K. Jain, learned senior counsel appearing for the landlord-respondent and with their valuable assistance have also gone in detail through the record of the case.

Shri Arun Jain, learned counsel appearing for the tenant-petitioner has vehemently reiterated all the pleas raised by the tenant before the Rent Controller. On that basis, the order of ejectment has been challenged. Shri Jain has maintained that section 13-A of the Act was a beneficial piece of legislation and was intended only for the benefit of such landlords who had acquired the property prior to their retirement and qua whom a relationship of landlord and tenant qua the demised premises, existed prior to the

retirement. To elaborate the aforesaid contention, learned counsel argues that the property in question was concededly purchased by the landlord vide registered sale deed dated November 17,2000, whereas the landlord had actually retired on superannuation from Indian Army as a Colonel in the month of March, 1998. According to the learned counsel, since the property in question had been purchased by the landlord after the date of his retirement, therefore, the landlord could not be treated to be a specified landlord within the meaning of the Act. It has further been argued by the learned counsel that even the aforesaid re-employment, upon which the landlord had relied upon to seek the status of a specified landlord was not in continuation of his original service inasmuch as the aforesaid re-employment was after a gap of four months. Learned counsel further argues that even the aforesaid re-employment was only for a period of two years and the sale deed in question dated November 17,2000 was not even executed within the aforesaid period of two years but even on his own showing the landlord had acquired the property in question during an extension granted to him in the re-employment.

Shri Jain has also referred to the various findings of the Rent Controller and the evidence on record to contend that since no consideration was shown to have been paid by the landlord from his own fund, therefore, the transaction of purchase by the landlord was in fact a sham transaction and was a camouflage which had been adopted by the two property dealers. Learned counsel has also referred to the certificate Ex.P10 and the statement of PW3 B.N. Munda, who had appeared as a witness from the Army Headquarter, and has contended that the said certificate was never issued by the Army Authorities and was in fact a forged and fabricated document

and, therefore, the landlord could not have taken any advantage of the said certificate and his claim for the ejectment of the tenant was liable to be rejected on this short ground. In support of his contention, Shri Jain has relied upon the following judgments:

1. Kewal Krishan V. Smt.Lajwanti 1996(2) R.L.R. 613,
2. Union of India V. Duni Chand Sharma 1994(1) R.C.R. 75,
3. Bhagat Dutt Rishi V. Ram Kumar 1990(1) Rent Control Reporter 27(SC), and
4. Nathi Devi V. Radha Devi Gupta JT 2005(1) SC 1

On the other hand, Shri V.K.Jain, learned senior counsel appearing for the landlord-respondent has refuted all the aforesaid contentions of the learned counsel for the tenant. Learned senior counsel has referred to the provisions of the Act to contend that the landlord, Gurprit Singh Hundal, fully satisfied the ingredients of a specified landlord and, as such, was rightly treated as a specified landlord by the Rent Controller. Learned senior counsel has further argued that after his retirement from service in the month of March 1998 on superannuation, as per the policy of the Indian Army, the landlord had been re-employed vide order dated May 22,1998, Ex.P13. Learned senior counsel has also brought to my notice that through the aforesaid order not only the landlord Gurprit Singh Hundal but a large number of other officers were re-employed. According to the learned senior counsel, the aforesaid re-employment of the landlord was as per Army instructions (Ex.P11) and for all purposes, the landlord was to be treated in service of the Indian

Army on such re-employment and was governed by the rules/regulations of the Indian Army. Learned senior counsel has also referred to the order dated June 8,2000,Ex.P14 whereby

landlord, Gurprit Singh Hundal was granted extension upto March 20, 2002 with a new place of posting. In the aforesaid order itself, it had been specified that if the aforesaid officer (Gurprit Singh Hundal) chose not to join the new place of posting, then he would be deemed to have been released with effect from January 31, 2001. According to the learned counsel, since the landlord did not choose to join at the new place of posting, therefore, in terms of the directions in the order Ex.P14, he was duly released from Army service with effect from January 31, 2001.

Learned senior counsel appearing for the landlord has also maintained that the property in question had been duly purchased by landlord prior to the date of his release from Indian Army i.e. on November 17, 2000 through a registered sale deed, Ex.P12. Recital in the sale deed has also been referred by the learned senior counsel to contend that the entire consideration had been paid before the Sub Registrar.

On the basis of the aforesaid legal and factual position, learned senior counsel appearing for the landlord has maintained that the Rent Controller had rightly ordered the ejectment of the tenant by treating the landlord to be a specified landlord having acquired the property at the time when he was in service and since the landlord did not have any other house in his possession or ownership in the entire City of Chandigarh where he wanted to settle after the retirement, he was entitled to the ejectment of the tenant.

In support of the various contentions, learned senior counsel for the landlord has relied upon B.K.Sharma V. Col.Harminder Singh Gill 1994(1) R.C.R. 255, Ram Krishan Chhokar V. Jagmohan Singh Ahluwalia 1995(2) RCR 633, Harbans Lal V. Jagdish Singh and another 2004(2) Civil Court Cases 358,

and Sohan Lal V. Uttam Singh 2004(3) Punjab Law Reporter 507.

I have duly considered the rival contentions of the learned counsel for the parties.

In my considered view, there is no merit in the present petition.

At the out set, it may be relevant to reproduce the provisions of section 2(hh), defining the specified landlord as under :

“2(hh) “specified landlord” means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.”

According to the definition, a person is to be treated as a specified landlord, who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.

In these circumstances, it has to be inferred that even a person who had been in re-employment after his original retirement is also covered by the definition of the specified landlord. There is no distinction between a person who was still in service prior to his superannuation or who had been so re-employed after his superannuation. The only requirement of the law is that a person should be holding an appointment in a public service or post in connection with the affairs of the Union or of a State. For the aforesaid view, I am supported by a judgment of this court in B.K.Sharma's case (supra), so relied upon on behalf of the landlord.

In these circumstances, it has to be determined as to whether the landlord after his conceded retirement in the month of

March,1998 had ever been re-employed or not. B.N.Munda, S.O., Army Headquarter, MS 3 Branch, New Delhi has appeared as PW3. He has categorically stated that re-employment of Col. Gurprit Singh Hundal was sanctioned vide letter dated May 22,1998 (Ex.P13).The witness has further deposed that second re-employment i.e. extension was granted to the Officer vide letter dated June 8,2000 (Ex.P14). The aforesaid witness has further stated that on his superannuation the officer had retired from service on March 31,1998. The witness has been candid that on January 31,2001, Gurprit Singh Hundal was not retired but had been released from re-employment.

Ex.P13 is an order dated May 22,1998 issued by Military Secretary Branch of Army Headquarters. It reflects the initial re-employment of a large number of officers including the landlord Col. Gurprit Singh Hundal. The aforesaid order indicates that the officers detailed in the order had been selected for the grant of initial re-employment in the Army for a period of two years and the aforesaid period of two years was to reckon with effect from the date they take up re-employment. The aforesaid order has been duly proved by B.N.Munda, PW3. Ex.P14 is another order dated June 8,2000 issued by Military Secretary Branch whereby the landlord Col. Gurprit Singh Hundal has been granted extension of re-employment of service upto March 20,2002 (upto the age of 56 years) with effect from July 15,2000 under the terms and conditions contained in the Army instructions. However, the aforesaid order further provides that in case the officer fails to report for duty by the given date, then he would be treated as having been given three months notice and would be released from re-employed service with effect from January 31,2001 by his present unit.

Col. Janak Singh Sudan has appeared as PW5. He has stated that the landlord had got retirement from the Headquarters at Kasauli on January 31, 2001 and was released on the aforesaid date.

Landlord, Gurprit Singh Hundal, has himself appeared as PW2. He has supported the pleas raised by him in the ejectment petition and has stated that he had retired from service on March 31, 1998 but prior to his retirement had applied for re-employment which was granted to him. He has further stated that he had purchased the property in question vide the sale deed dated November 17, 2000. Landlord has also stated that he was released from re-employed service with effect from January 31, 2001.

Army instructions No.1/S/80 have also been produced on record as Ex.P11 by the landlord. Para 3 of the Instructions clearly stipulates that on re-employment, the officer will be subject to the Army Act, 1950. The mode of selection for re-employment was clearly stipulated in the said instructions. The selected/re-employed officers are entitled to various benefits including travelling concessions. The mode of determination of inter-se seniority and pay and allowances of the re-employed officers is also stipulated in these instructions.

In view of the aforesaid evidence on record, it necessarily has to be inferred that landlord Col. Gurprit Singh Hundal, after his original retirement on March 31, 1998, had been duly re-employed by the Indian Army initially for a period of two years, which period was further extended upto March 20, 2002 with a stipulation that if the officer did not join the new place of posting, then he would be deemed to be released with effect from January 31, 2001. Since the landlord did not choose to join his new place of posting when he was granted second extension, therefore, he was

released from Army with effect from January 31,2001. The house in question had been purchased by him on November 17,2000 i.e. at the time when he was working on re-employment. The relationship of landlord and tenant between the parties existed at that point of time. In these circumstances, for all practical purposes and in terms of provisions of section 2(hh) of the Act, the landlord is to be treated as a specified landlord.

The various judgments relied upon by Shri Arun Jain, learned counsel appearing for the tenant-petitioner are not relevant to the facts and circumstances of the case inasmuch as all the aforesaid judgments deal with a question as to whether if a landlord purchased/acquired a property after his retirement, could he be treated as a specified landlord ? However, in the present case, as noticed above, the landlord had acquired the property while still in re-employment. At the time of purchase and while still in re-employed service, relationship of landlord and tenant existed between the parties.

The tenant has also challenged the authenticity and correctness of the certificate Ex.P10. According to his learned counsel, the aforesaid certificate was forged and fabricated and did not contain correct facts. However, on account of the fact that the original date of superannuation and the release of the officer from the Indian Army after extended period on January 31,2001 stands duly proved by independent evidence, duly discussed above, the certificate Ex.P10, loses its relevance. In this regard, reliance can be placed with advantage on the judgment in *Sohan Lal V. Uttam Singh's case* (supra) relied upon by the landlord.

A serious and vehement challenge has also been made to the transaction of purchase by the landlord. It has been

maintained by the tenant that said transaction was a sham transaction and landlord has not spent any money from his own resources. The property in question in fact was purchased by two property dealers.

The aforesaid arguments also cannot be accepted. Firstly, the said plea cannot even be entertained in view of a specific prohibition contained in Benami Transactions (Prohibition) Act,1988. Secondly, the sale deed Ex.P12 has been proved on record. The said sale deed clearly shows that the said consideration amount had been paid by the landlord before the Sub Registrar. The said transaction cannot be challenged by the tenant in any manner.

No other point has been urged.

In view of the aforesaid discussion, I do not find any merit in the present petition. The same is consequently dismissed. However, the tenant-petitioner is granted three months time to hand over the vacant possession of the premises to the landlord.

December 13,2006
sks

(Viney Mittal)
Judge